DISPOSITION WORKSHEET

Case Number: IV 2137012
Subject: Frank Higuera, [redacted] Deputy Sheriff
Assignment: Industry Station
Investigator: Lieutenant Mark F. Relyea

CASE SUMMARY

On January 9, 2005, at approximately 0110 hours, Subject Higuera was working Unit 141K1 when he received a call, an audible alarm, at "Omni Life" at 2815 Pellissier Place in the City of Industry. Subject Higuera's log indicated that he responded to the call at 0114 hours, arriving at 0138 hours, and concluding the call at 0141 hours. Subject Higuera's log also indicated that he checked the location and it was [redacted] On January 10, 2005, it was learned that there was a burglary at the [redacted] business which entailed an obvious forced entry to a roll-up door on the west side of the building which had been apparently rammed by a vehicle to gain entry, leaving significant damage. The investigation revealed that the damage to the door had triggered the alarm activation that Subject Higuera had cleared on his log.

Sergeant John Voza conducted an inquiry into this incident, and Subject Higuera explained that he had never actually responded to the call. Subject Higuera explained to Sergeant Voza that he had heard a request for additional units at Industry Station in regards to an inmate that escaped from custody. Subject Higuera said that he discontinued his response to the alarm call and responded to assist with the search for the escaped inmate. Subject Higuera said that he never made it back to the call.

Subject Higuera was interviewed by Lieutenant Mark Relyea, and he explained that he was responding to the alarm call and had activated the [redacted] key on his MDT approximately a block away from the call. He was then flagged down by a truck driver that was in need of directions. After he assisted the truck driver, he continued to the call as he heard radio traffic that they had an escape from custody at the Industry Station jail. Subject Higuera said that he activated the [redacted] key of the MDT to allow him to create an observation on his log documenting his involvement in the search for the escaped prisoner.

Subject Higuera admitted that he never went to the location and checked to identify the source of the alarm activation. Subject Higuera never told the desk that he did not handle the call, nor did he request that they send someone else by to check the location. Instead, he told the assisting unit Deputy Eads that the location was [redacted] He also cleared his Deputy Daily Worksheet at 0310 hours with narrative typing that he "927C re 459A [redacted] Subject Higuera had handled other audible alarm calls on that evening. He stated that he knew he had not gone to the call when he cleared it out on his log; however, he said that he had handled the other audible alarm calls correctly. Subject Higuera said that this is the only call that he can remember clearing where he never actually responded to the location.

Note: A review of Subject Higuera's January 9, 2005, Deputy Daily Worksheet shows he was assigned to assist with two audible alarm calls, Tag -472 and Tag-13. Both calls show a beginning and ending time of 0113. There is no activity logged between 0114 hours when he activated his en route key showing he was responding to the Pellissier audible alarm and his activation of the [redacted] key at 0138 hours. There is also no assist citizen entry on his Deputy Daily Worksheet providing information on the truck driver that he reported assisting with directions.

DISPOSITION OF CHARGES

Potential Charge #1

That in violation of Manual Section 3-01/050.10, Performance to Standards; and/or 3-01/100.35, False Information in Records; on or about January 9, 2005, between 0138 and 0310 hours, Subject Higuera failed to respond to "Omni Life" at 2815 Pellissier Place, City of Industry, in response to an audible alarm call. He created log entries indicating he went to the location, checked the location, and determined it was [redacted] when, in fact, he had not responded. Subject Higuera erroneously informed an assisting unit that it was [redacted] at the location. Subject Higuera failed to notify the desk that he was unable to handle the audible alarm call.

Evidence Reference

Deputy Daily Worksheet/Unit History-Higuera 01-09-05
Office Correspondence -McBride
Subject Interview-Higuera
Incident Report-00472

Disposition

- ✓ Charge founded as delineated
- ___ Charge founded as modified
- ___ Charge unresolved
- ___ Charge unfounded

Review of Applicable "Guidelines for Discipline"

The Department's "Guidelines for Discipline" lists the following analogous misconduct with associated disciplinary penalties:

Performance to Standards — See Notes # 3 & # 4

Falsification of official reports or records.	15 Days Suspension to Discharge See Note #1
Falsification of internal documents or communications.	10 -15 Days Suspension See Note #1

Note #1 - As noted elsewhere in these Guidelines, discipline is expected to be within the standard range in most cases. In the event circumstances warrant a downward adjustment to a penalty less than the standard range, the indicated offense may not be reduced below a five (5) day suspension.

Note #3 - In addition, performance issues may be addressed by the personnel performance evaluation system. See Civil Service Rule 20. Those rules provide that an employee must be discharged as a result of an unsatisfactory evaluation.

Note #4 - The standard discipline for this section can range from a written reprimand to discharge, based on an evaluation of the totality of the circumstances.

ASSESSMENT OF MITIGATING AND AGGRAVATING FACTORS

Severity of Infraction

Subject Higuera failed to respond to an audible alarm call that was an actual burglary in progress. His failure to respond, forfeited the Department's best opportunity to identify the burglary suspect who drove a vehicle into the roll up doors of the business in the City of Industry. It also resulted in the business being left open with a damaged roll-up door from early Sunday morning on January 9, 2005 until Monday morning January 10, 2005.

Subject Higuera compounded the problem by creating a Deputy Daily Worksheet entry that indicated that he had checked the location and that it was [redacted]

Intent, Truthfulness, and Acceptance of Responsibility

Subject Higuera was presented with the opportunity to provide his version of the facts. He explained that he had intended on responding to the call for service; however, he responded to a request for additional units at Industry Station concerning an escaped prisoner.

Subject Higuera was forthright in admitting that he did not respond to the call. He also admitted that he told his assisting unit that it was [redacted] and created a log entry that said that he had checked the location and it was [redacted] Subject Higuera apologized and described his actions as a mistake in judgment and an enigma.

Degree of Culpability

Subject Higuera is entirely culpable for his failure to respond to this call. His failure to respond immediately is mitigated by the necessity to respond to assist with the escaped prisoner from Industry Station. However, he still had a responsibility to ensure that the location was checked. Subject Higuera had the opportunity to request that his assisting unit, Deputy Eads, check the location but elected to tell him that the location was [redacted]

Subject Higuera had an opportunity to check the location prior to ending his shift or to contact the desk and have them reassign the call for service. Instead Subject Higuera elected to clear the call and to create a Deputy Daily Worksheet entry that indicated that he checked the area of the alarm and the location was [redacted] This action ultimately deprived this business of our assistance and resulted in their business being left open for an extended period of time.

Past Performance and Disciplinary History

Subject Higuera has served as a deputy sheriff since November of 1989. His last performance evaluation was "Competent." He has two founded investigations.

April 15, 2003	3-01/030.15 Conduct Toward Others 3-01/030.05 General Behavior 5 Day Suspension
October 13, 2004	3-01/040.45 Safeguarding Money, Property 3-01/050.10 Performance to Standards 3-01/030.10 Obedience to laws, Regulations and Orders 3 Day Suspension

Determination of Discipline

Based upon the assessment of mitigating and aggravating factors, the following discipline has been determined to be appropriate. This discipline is subject to revision upon receipt of the Subject's response or grievance.

____ Discharge
____ Reduction in Rank
_✓_ Suspension with loss of pay and benefits for __7__ day(s)
____ Written Reprimand
____ No discipline



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

June 27, 2005

Deputy Frank Higuera, #[redacted]
[redacted]

Dear Deputy Higuera:

You are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of seven (7) days.

An investigation under File Number IAB 2137012, conducted by Industry Station, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards and/or 3-01/100.35, False Information in Records, on or about January 9, 2005, you failed to establish and maintain the highest standards of efficiency in carrying out the functions and objectives of the Department when you neglected to respond to an audible alarm call at 2815 Pellissier Place, in the City of Industry. Furthermore, you created log entries indicating you had driven to the location, checked the location and determined it was "Code 4" when, in fact, you had not responded to the location. Moreover, you erroneously informed an assisting unit that it was "Code 4" at the location and/or failed to notify the desk that you were unable to handle the call.

Prior to determining this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You have the right to grieve this disciplinary action within ten (10) business days of receipt of this letter. Your grievance procedures may be found in your classification's negotiated Memorandum of Understanding.

Failure to respond to this Letter of Intent within ten (10) business days will be considered a waiver of your right to grieve and will result in the imposition of this discipline indicated herein.

You may receive a copy of the material on which the discipline is based by contacting Reba Barnes of the Internal Affairs Bureau at [redacted] and arranging an appointment during the ten (10) day period in which you may respond.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Michael W. Smith, Captain
Commander, Industry Station

MWS:KM:rjb

c: Advocacy Unit
Employee Relations Unit
Marvin O. Cavanaugh, Chief, Field Operations Region III
Internal Affairs Bureau
Office of Independent Review (OIR)
(File # IAB 2137012)

RECEIVED

JUN 2 9 2005

EMPLOYEE RELATIONS

SETTLEMENT AGREEMENT

This Agreement is entered into between the Los Angeles County Sheriff's Department, hereinafter referred to as "Department," and Deputy Frank Higuera, Employee Number [redacted] hereinafter referred to as "Grievant."

The Department and Grievant are parties to this dispute and desire to settle all issues involved in the Letter of Intent dated June 27, 2005, (IAB No. 2137012) upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Department and Grievant for and in consideration of the mutual covenants contained herein, agree as follows:

1. Both parties agree that the seven (7) day suspension shall stand. The Letter of Imposition shall contain the same charges as the Letter of Intent.

2. The Department will, upon execution of this Agreement, impose four (4) days of the intended seven (7) day suspension. The remaining three (3) suspension days will be held in abeyance.

3. The Grievant understands that if he becomes the subject of a founded investigation involving similar violations of the Manual of Policy and Procedures, and that if the event resulting in the founded investigation occurred within the twelve (12) month period of the date of execution of this Agreement, the three (3) days held in abeyance shall be imposed. In addition, the Grievant understands that he will be subjected to additional discipline for each and every founded violation of the Department's Manual of Policy and Procedures.

4. Both parties agree and understand that the Grievant's records will reflect that the seven (7) day suspension was imposed and may be used for the purposes of demonstrating "progressive discipline."

5. The Grievant agrees to waive any and all further administrative or judicial remedies with respect to the Letter of Imposition and the modified discipline, and also waives any administrative or judicial remedies with respect to any imposition pursuant to paragraph three (3), above.

6. The parties further agree that this Settlement shall not be considered, cited, or used in future disputes as establishing past precedent or past employment practice.



7. In consideration of the terms and conditions set forth herein, Grievant agrees to fully release, acquit and forever discharge the County, and all present and former officers, employees and agents of the County, and their heirs, successors, assigns and legal representatives from any and all liability whatsoever for any and all claims arising out of or connected with the employment relationship between the County and Grievant concerning the subject matter of the grievance referred to herein.

8. The Grievant further agrees to relinquish and expressly waives all rights conferred upon him by the provisions of California Civil Code Section 1542, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9. The date of the last signature placed hereon shall hereinafter be known as the "date of execution" and the "effective date" of this Agreement.

10. The parties agree that the foregoing comprises the entire Agreement between the parties and that there have been no other promises made by any party. Any modification of this Agreement must be in writing.

I have read the foregoing Settlement Agreement, and I accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

For the Sheriff's Department:

Date: 6/29/08

Frank Higuera, Deputy

Date: 6/29/05

Michael Smith, Captain



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

July 9, 2005

Deputy Frank Higuera, #[redacted]
[redacted]

Dear Deputy Higuera:

On June 27, 2005, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2137012. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. After reviewing the response submitted to support your position, the Department executives have amended the recommended discipline.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of seven (7) days. However, pursuant to a settlement agreement between you and the Department, three (3) of the seven (7) days will be held in abeyance for a period of twelve (12) months which will end on June 28, 2006. If you should become the Subject of a founded administrative investigation, with similar violations, and the event occurred within the prescribed twelve (12) month time period, the three (3) days held in abeyance will be imposed. Additionally, you will be subject to further discipline for each and every founded violation of the Department's Manual of Policy and Procedures. All Departmental records will reflect, nevertheless, that you received a seven (7) day suspension.

The effective dates for the remaining four (4) day suspension are from July 12, 2005 through July 15, 2005.

An investigation under File Number IAB 2137012, conducted by Industry Station, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections [redacted] 3-01/100.35, False Information in Records, on or about January 9, 2005, you failed to establish and maintain the highest standards of efficiency in carrying

out the functions and objectives of the Department when you neglected to respond to an audible alarm call at [redacted], in the City of Industry. Furthermore, you created log entries indicating you had driven to the location, checked the location and determined it was "Code 4" when, in fact, you had not responded to the location. Moreover, you erroneously informed an assisting unit that it was "Code 4" at the location and/or failed to notify the desk that you were unable to handle the call.

Prior to imposing this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Michael W. Smith, Captain
Commander, Industry Station

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy.

MWS:KM:rjb

c: Advocacy Unit
Marvin O. Cavanaugh, Chief, Field Operations Region III
Internal Affairs Bureau
Personnel Administration
Office of Independent Review (OIR)
Industry Station/unit Personnel File